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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,943	12/11/2003	Janine L. Cox	COX 02.01	7265

7590 11/03/2004

Dale F. Regelman  
Law Office of Dale F. Regelman, P.C.  
4231 S. Fremont Avenue  
Tucson, AZ 85714

EXAMINER

NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/732,943	Applicant(s) COX ET AL.	
	Examiner Trinh T Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/5/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 3 (claims 1-5, and 21-23) in the reply filed on 8/30/04 is acknowledged.
2. Claims 6-20, and 24 (note that claim 24 has been withdrawn due to its dependency to claim 11) have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atchley (US 3,838,664).

Atchley discloses a bird feeder, comprising: a first reservoir (1) comprising an output port; liquid hummingbird food disposed in said first reservoir; and a fluid conduit (2) comprising a first end, and a second end, wherein said first end can be releaseably attached to said output port.

Atchley lacks the teaching of an elastomer fluid conduit and an elastomer reservoir. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a material for a fluid conduit and/or a

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reservoir, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Also, since applicant did not provide a reason and/or showing any criticality as to why the fluid conduit or the reservoir has to be an elastomer.

Furthermore, it is believe that through trial and error during the manufacturing process that one uses the most efficient material to meet the design criteria.

For claim 3, Atchley further discloses a flow restrictor (9, 10) disposed within said fluid conduit adjacent said second end.

For claim 4, Atchley lacks the teaching of a flow restrictor comprises a cellular material having a plurality of individual fluid flow channel disposed therethrough. However, it is noted that Atchley discloses the use of members (9, 10) as flow restrictor wherein the flow restrictor having a plurality of individual fluid flow channel (see attached Figure 3 of Atchley at the end of this Office Action), which is considered as a flow restrictor functional equivalent to the flow restrictor as claimed, for restricting the flow of liquid in the conduit. Therefore, it would have been obvious to one of ordinary skill in the art to use either Atchley's flow restrictor or Applicant's flow restrictor, since to do so would merely replace one old and well known flow restrictor means with another art equivalent old and well known flow restrictor means.

5. Claims 5 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Atchley (US 3,838,664) in view of Klein (US 5,640,927).

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Atchley lacks the teaching of a valve, wherein the valve is interconnected to the output port and wherein the first end of said fluid conduit can be releaseably connected to the valve.

Klein teaches a similar bird feeder as that of Atchley in which Klein's feeder having a valve (103) interconnected to the output port and wherein the first end of said fluid conduit (107) can be releaseably connected to the valve. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the feeder of Atchley so as to include the use of a valve, in a similar manner as taught in Klein, since to do so would allow a more efficient way to regulate the flow of liquid therein.

### ***Conclusion***

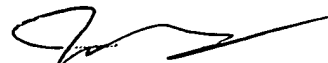
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as cited on PTO-form 892.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703) 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen  
Patent Ex.  
Art Unit 3644  
10/29/04

PATENTED OCT 1 1974

3,838,664

SHEET 1 OF 2

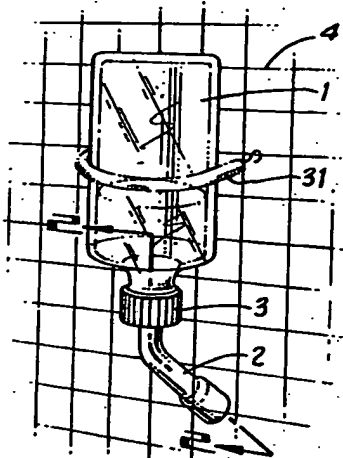


FIG. 1

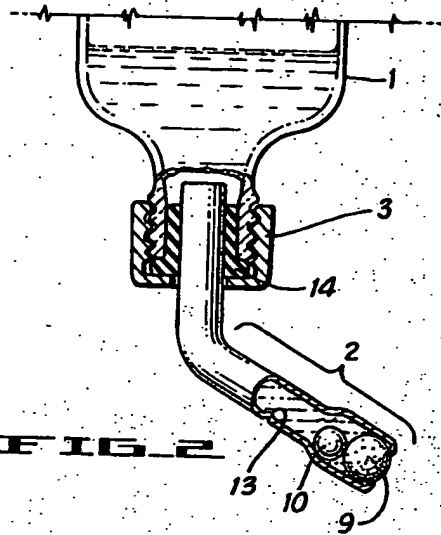


FIG. 2

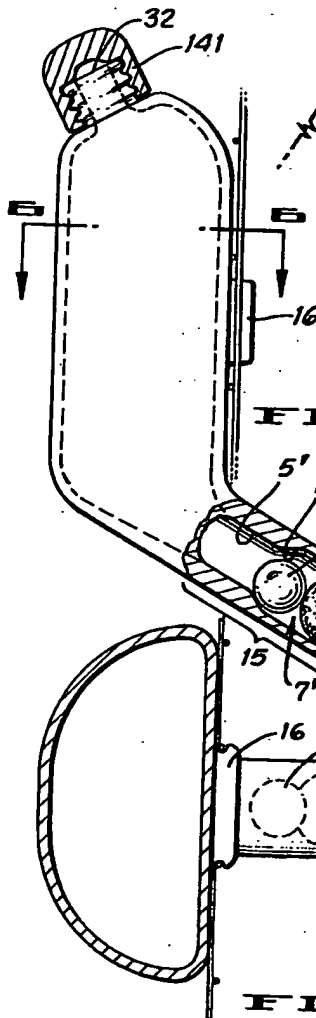


FIG. 5

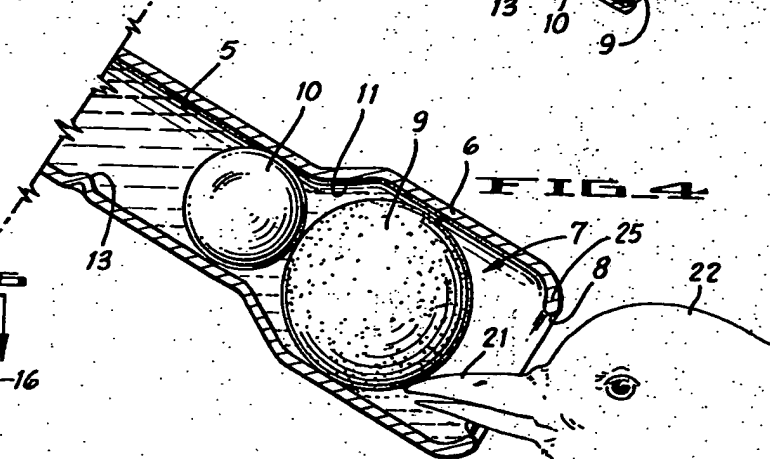


FIG. 4

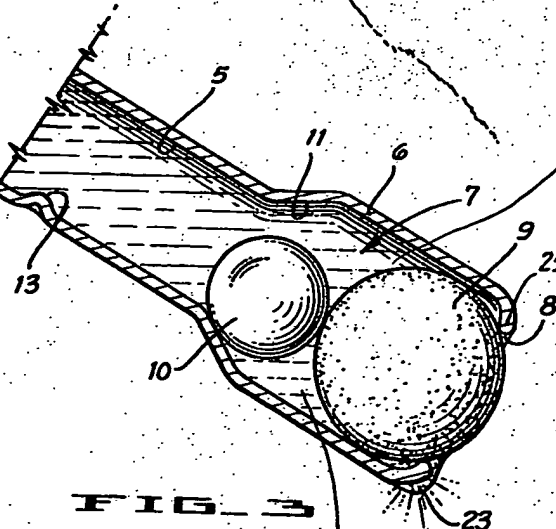


FIG. 3

flow channel

flow channel